

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Kendrick L. Williams,

Petitioner

v.

State of Nevada, *et al.*,

Respondents

Case No.: 2:24-cv-00858-APG-MDC

**Order Dismissing Case
Without Prejudice**

[ECF No. 5]

Pro se Petitioner Kendrick L. Williams, a Nevada prisoner, initiated this case by submitting a petition for writ of habeas corpus (ECF No. 1-1) under 28 U.S.C. § 2254. On August 21, 2024, I ordered Williams to show cause why his petition should not be dismissed without prejudice for failure to exhaust his claims in state court. ECF No. 5. I instructed Williams to file a “Response to Order to Show Cause” in writing or, in the alternative, to file a motion for stay and abeyance, within 30 days and warned that his failure to timely and fully comply with the order would result in a dismissal of this action without prejudice and without further advance notice. *Id.* at 4. However, Williams did not comply with the order by either filing a response to the order to show cause or a motion for stay and abeyance, and the 30-day deadline has expired.

To date, Williams has not filed a response to the order to show cause or taken any action to prosecute this case.

Discussion

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may

1 dismiss an action based on a party's failure to obey a court order or comply with local rules. *See*
2 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply
3 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*
4 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
5 order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)
6 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
7 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
8 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
9 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*
10 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

11 The first two factors, the public's interest in expeditiously resolving this litigation and the
12 court's interest in managing its docket, weigh in favor of dismissal. The third factor, risk of
13 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
14 from the occurrence of unreasonable delay in filing a pleading ordered by the court or
15 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
16 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
17 the factors favoring dismissal.

18 The fifth factor requires me to consider whether less drastic alternatives can be used to
19 correct the party's failure that brought about the court's need to consider dismissal. *See Yourish*
20 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
21 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
22 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
23 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives

1 prior to disobedience of the court’s order as satisfying this element[.]” *i.e.*, like the “initial
2 granting of leave to amend coupled with the warning of dismissal for failure to comply[.]” have
3 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before
4 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*
5 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because litigation cannot progress without
6 Williams’s compliance with court orders, the only alternative is to enter a second order setting
7 another deadline. But the reality of repeating an order is that it often only delays the inevitable
8 and squanders the court’s finite resources. The circumstances here do not indicate that this case
9 will be an exception. Setting another deadline is not a meaningful alternative given these
10 circumstances. So the fifth factor favors dismissal.

11 **Conclusion**

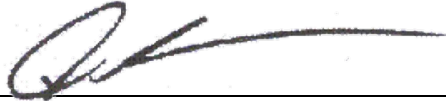
12 I THEREFORE ORDER:

- 13 1. Petitioner Kendrick Williams’s Petition for Writ of Habeas Corpus (ECF No. 1-1) is
14 DISMISSED WITHOUT PREJUDICE based his on failure to comply with the Court’s
15 Order (ECF No. 5).
- 16 2. Williams is denied a certificate of appealability, as jurists of reason would not find
17 dismissal of the petition for the reasons stated herein to be debatable or wrong.
- 18 3. Under to Rule 4 of the Rules Governing Section 2254 Cases, the Clerk of Court is
19 directed to add Nevada Attorney General Aaron D. Ford as counsel for respondents and
20 informally serve the Nevada Attorney General by directing a notice of electronic filing of
21 this order to his office. No response is required from respondents other than to respond
22 to any orders of a reviewing court.

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1 4. The Clerk of the Court is instructed to enter final judgment accordingly and close this
2 case.

3 DATED this 22nd day of October, 2024.

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6 ANDREW P. GORDON
7 CHIEF UNITED STATES DISTRICT JUDGE
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